

JURY SELECTION THE POWER OF THE PROCESS

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In Death Cases Sometimes We Do A Little Extra



Capital Jury Project

- **53% Of jurors in capital cases make punishment decision during evidentiary phase**
- **97% of pro-death jurors felt strongly about their pro-death position during the evidentiary phase**

Cold Hard Fact

Capital Jury Project:

**A Substantial Number of Jurors In
Capital Cases Are Not Qualified
To Serve**

Every Capital Juror Must Know

- 1. Each Juror Decides Life or Death – Law is always satisfied with a Life Verdict**
- 2. One vote means life**
- 3. Individual Decision re Mitigating Factors**
- 4. Mitigation Unique to Each Juror**
- 5. Individual Mitigation is sufficient**

Every Capital Juror Must Know

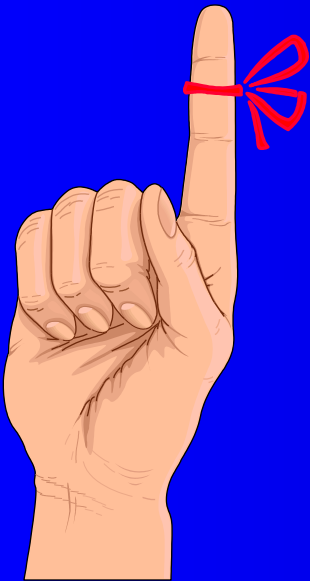
- 6. One mitigating factor is enough for life regardless of the number of aggravators**
- 7. Each juror may vote for life based on mercy alone**
- 8. Individual Moral Assessment – No Law**
- 9. Never required to put into words reason for life vote**
- 10. Each jurors vote is respected**

OLD SCHOOL v. NEW SCHOOL

- EDUCATE THE PANEL –
INDOCTRINATE
- INFORMATION ABOUT THEM
- BUILD RAPPORT

- BUILD RAPPORT
- INFORMATION ABOUT THEM
- EDUCATE THE PANEL

LISTEN

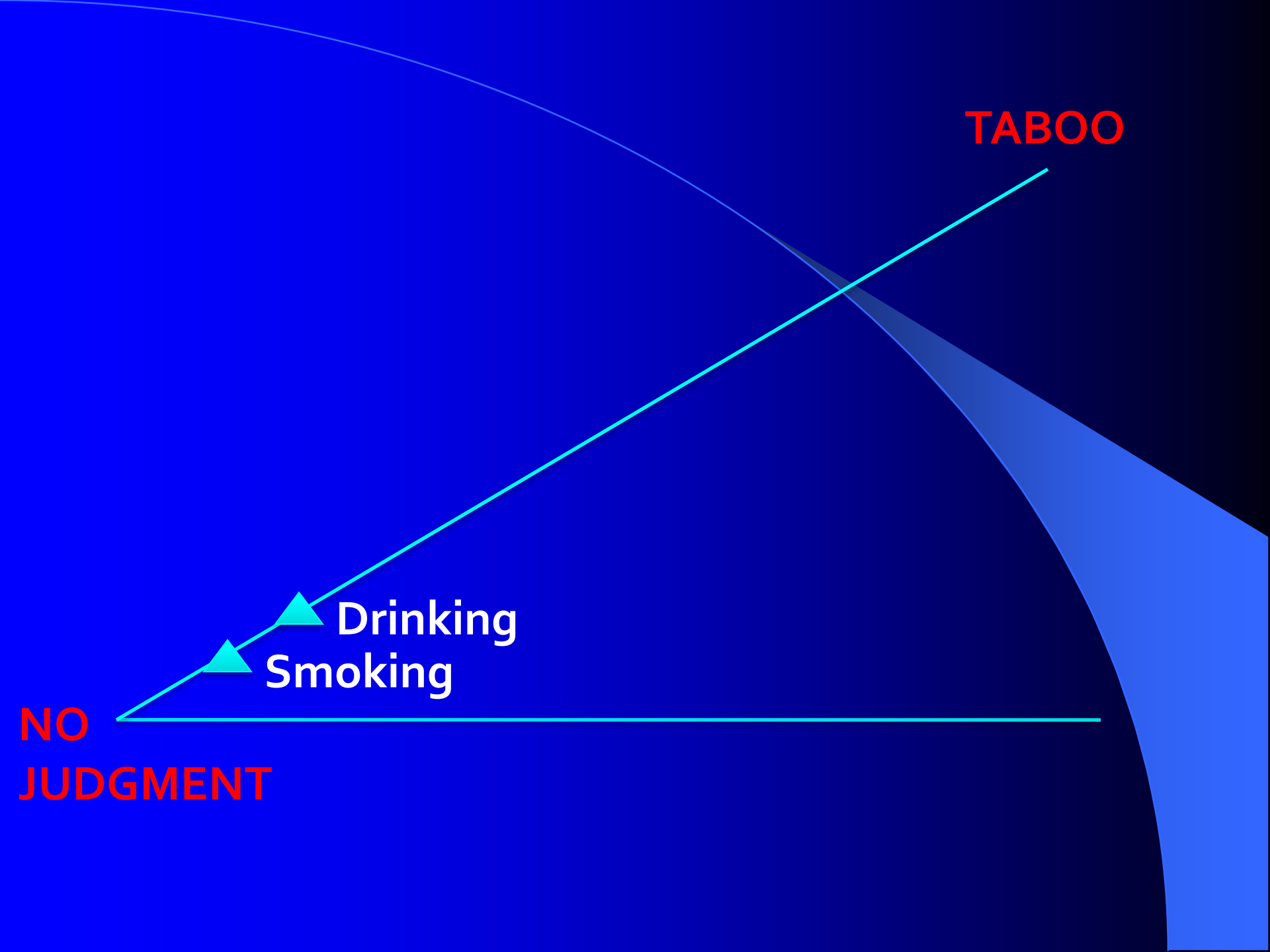


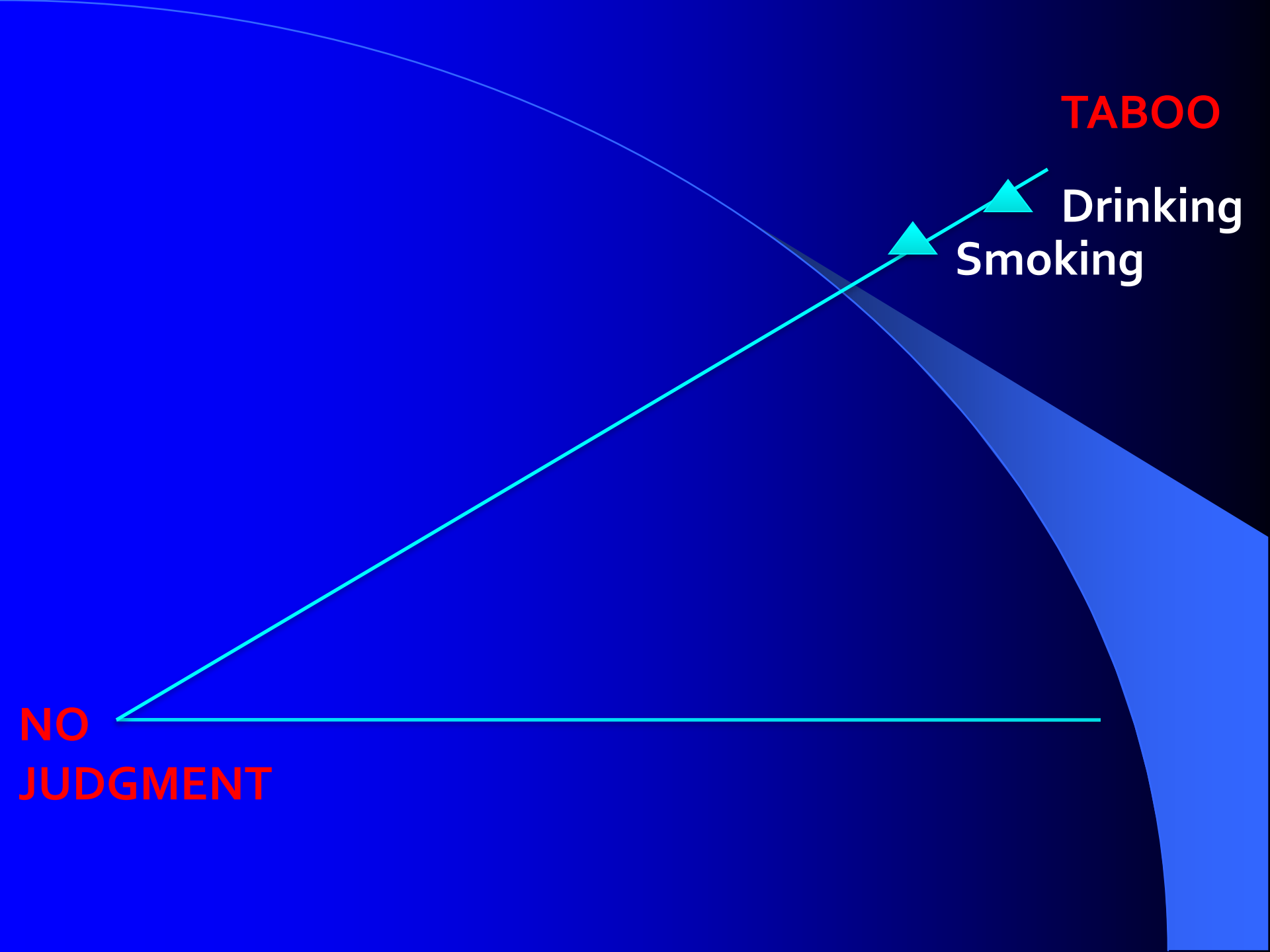
LISTENING = RESPECT

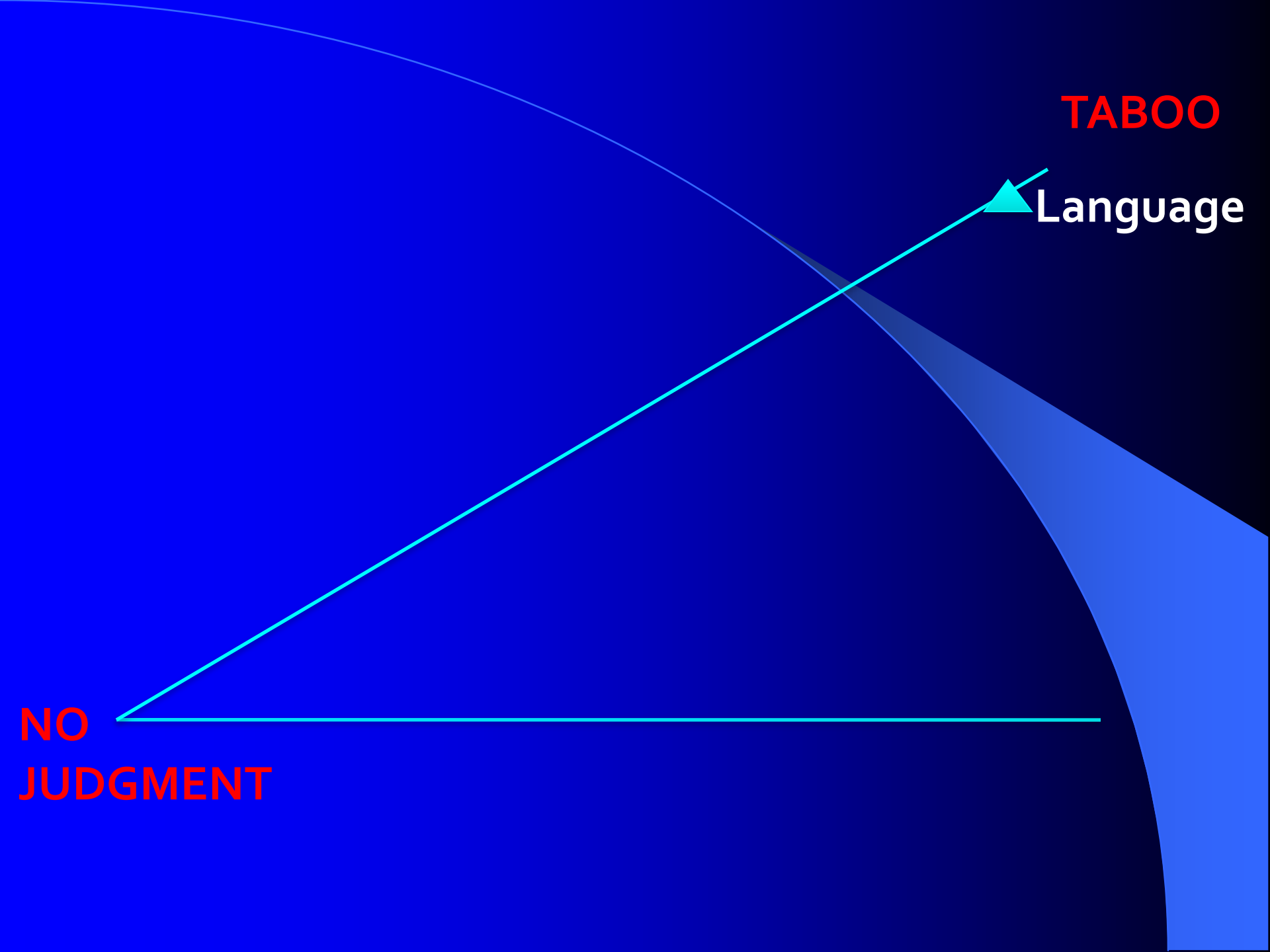
The Judgment Line

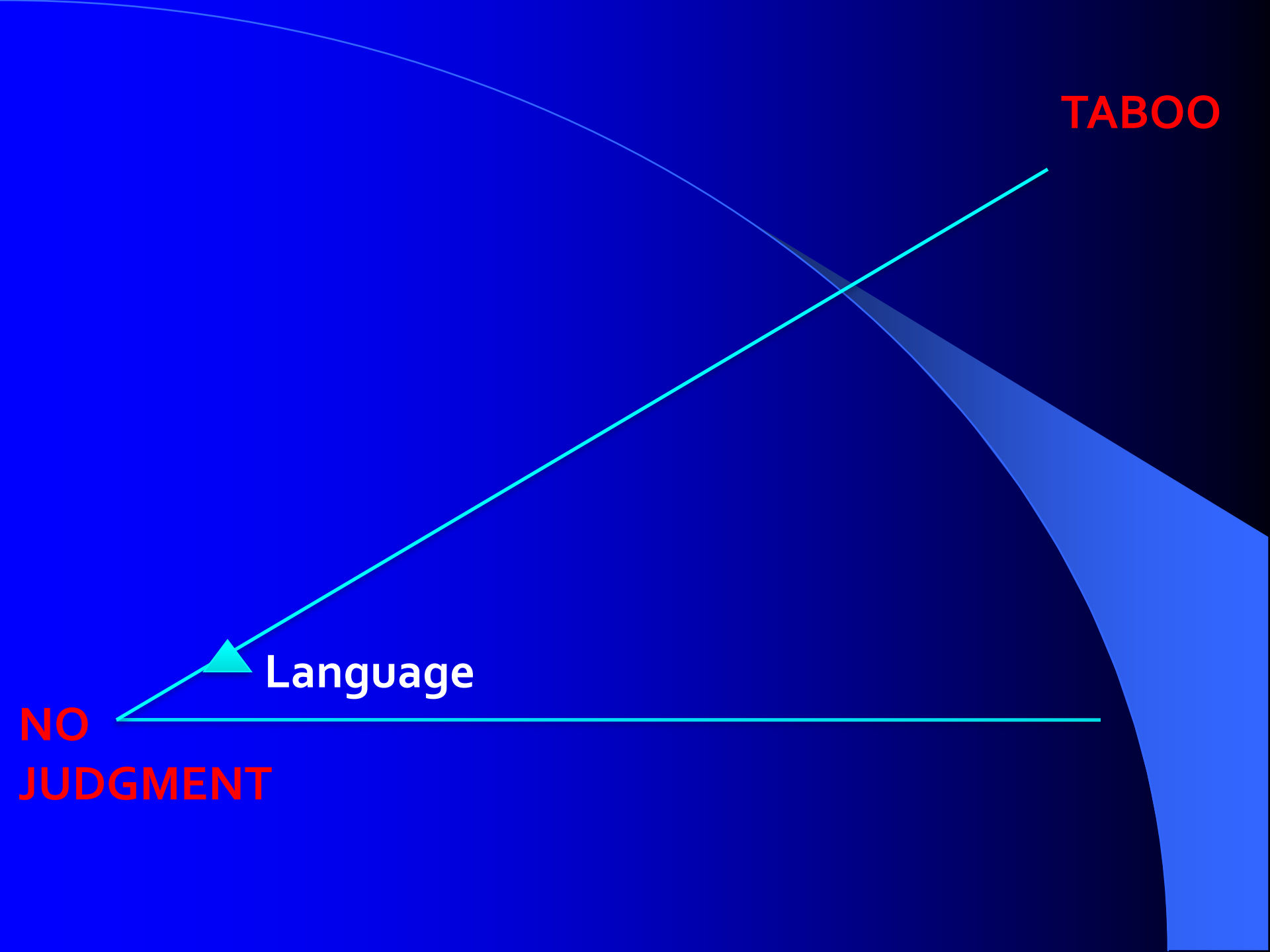
- Shifting Social Values

People are in conflict when their experience, what life teaches, challenges what they have been brought up to believe and want to believe.







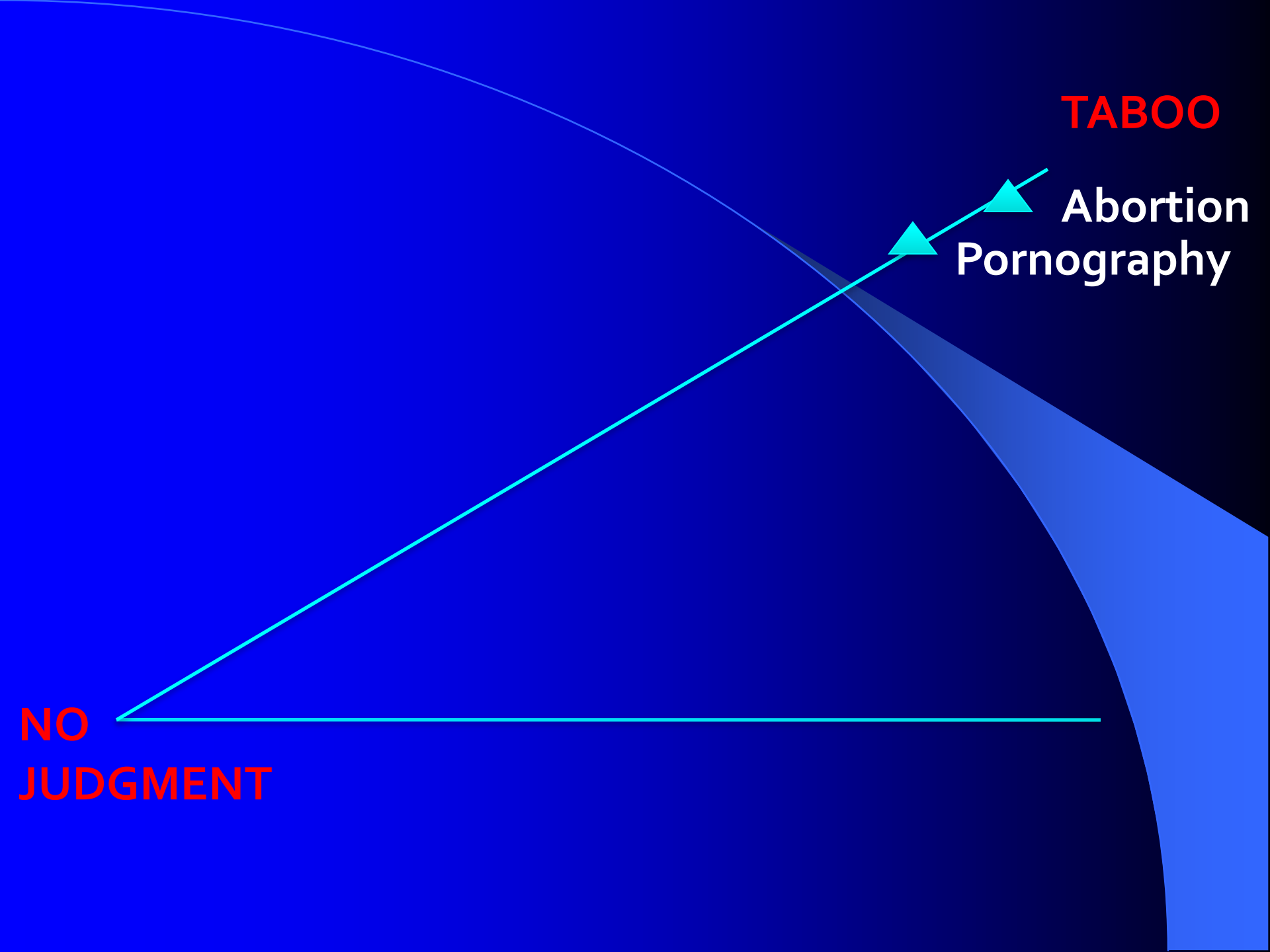


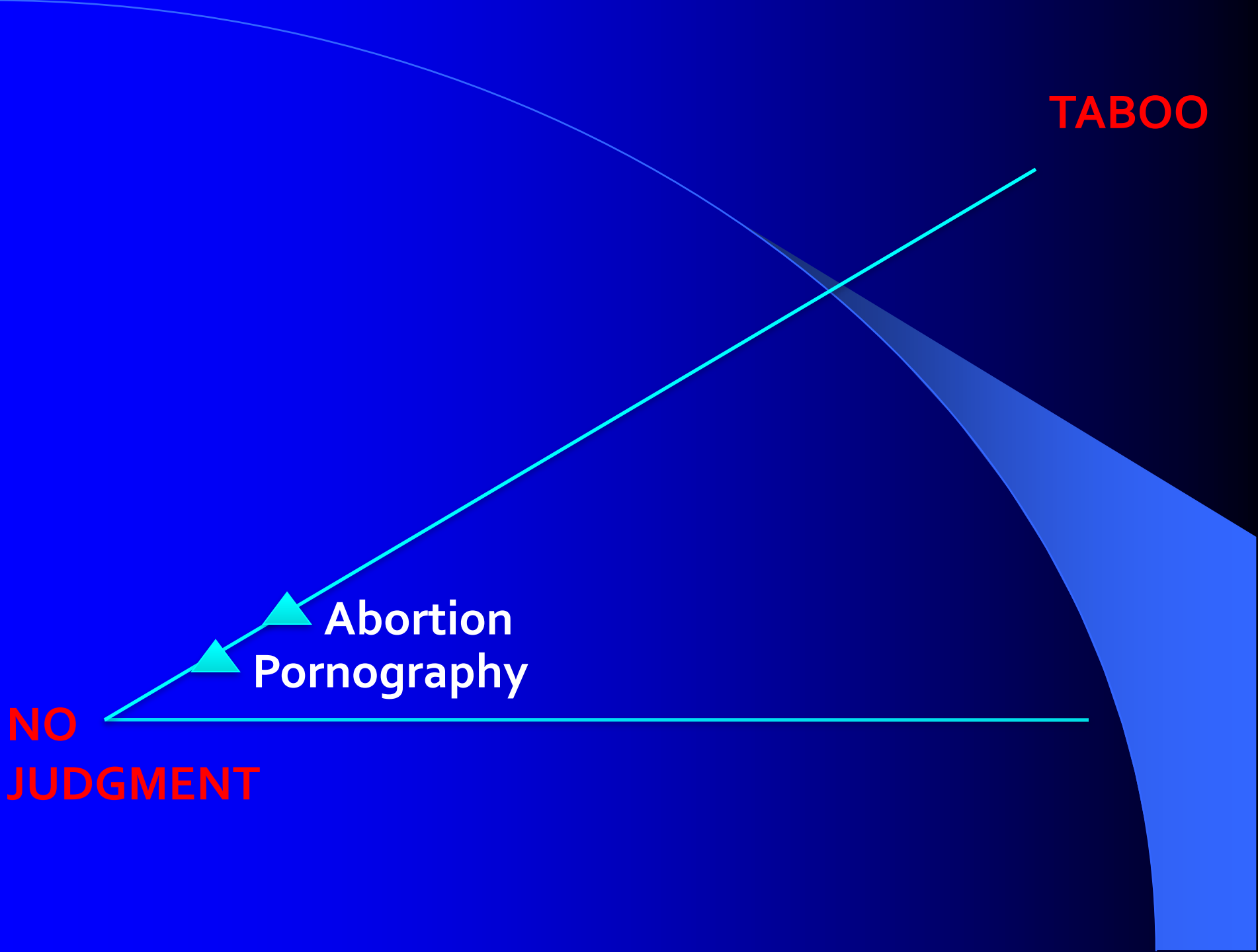
TABOO

**Abortion
Pornography**



**NO
JUDGMENT**





TABOO

NO
JUDGMENT

Abortion
Pornography

**** IF SOMEONE TOLD ME
THESE FIVE THINGS***

- 1. THERE IS NO SUCH THING AS A PERFECT JUROR**
- 2. YOU CANNOT DO IT THE SAME WAY EACH TIME**
- 3. JURORS REACH VERDICTS ON SOMETHING OTHER THAN FACTS AND LAW**
- 4. YOU DON'T EVEN WANT THE CONTROL YOU'RE WISHING FOR**
- 5. YOU CAN'T CHANGE ANYONE'S MIND DURING JURY SELECTION**

Judge = Biggest Impediment

- 1. Robe doesn't make you good at it**
- 2. Not a legal hearing – factual – legal conclusion**
- 3. The panel members are not witnesses**
- 4. Judges add to the hocus pocus of Jury selection**
- 5. Judge's Power is perceived immediately**
- 6. Judge's are time driven**
- 7. Judge does not know your case**
- 8. Judges think they can instruct away bias**

3 STEPS IN DEVELOPING THE JURY PLAN



1. BRAINSTORM



2. PRIORITIZE ISSUES



3. PICTURE THE JURY YOU WANT

BUILDING RAPPORT

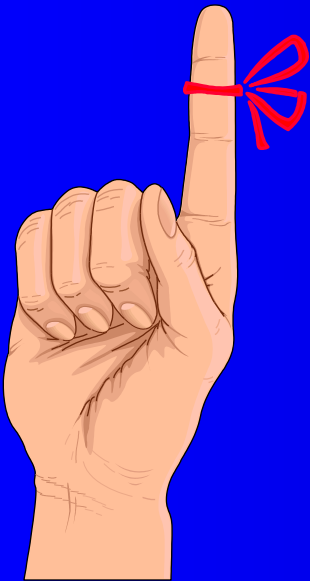
1. EMPATHY

2. WARMTH / ACCESSIBILITY

3. RESPECT

4. CONGRUENCE

LISTEN



LISTENING = RESPECT

Starting The Conversation

THE PERSON WHO WANTS THE INFORMATION MUST TAKE RESPONSIBILITY FOR THE COMMUNICATION

SELF DISCLOSURE

- **IF BOTH SIDES WANT CONTROL- NOTHING HAPPENS**
- **PEOPLE TALK TO PEOPLE WHO TALK TO THEM**
- **PEOPLE TALK TO THOSE THEY FEEL EQUAL WITH**

WHAT'S GOING ON WITH THEM

- **BELIEFS**
- **ATTITUDES /PREJUDICE**
- **VALUE SYSTEM**

JUROR THINKING

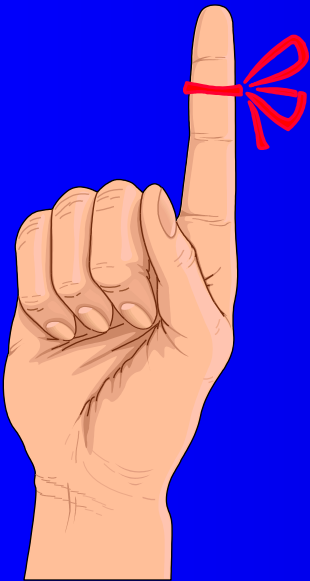
- **Beliefs:** Perceived truths reinforced within community
- **Attitude/Prejudice:** Ready made response makes it easy to avoid complexities of life. Do not respond to individuals response is to a group or category
- **Value System :** More abstract. Deeply engrained – people are not usually aware of how values dictate behavior

- NON VERBAL CLUES -



**BODY LANGUAGE
NEEDS A CONTEXT**

LISTEN



LISTENING = RESPECT

THE OPEN ENDED QUESTION –

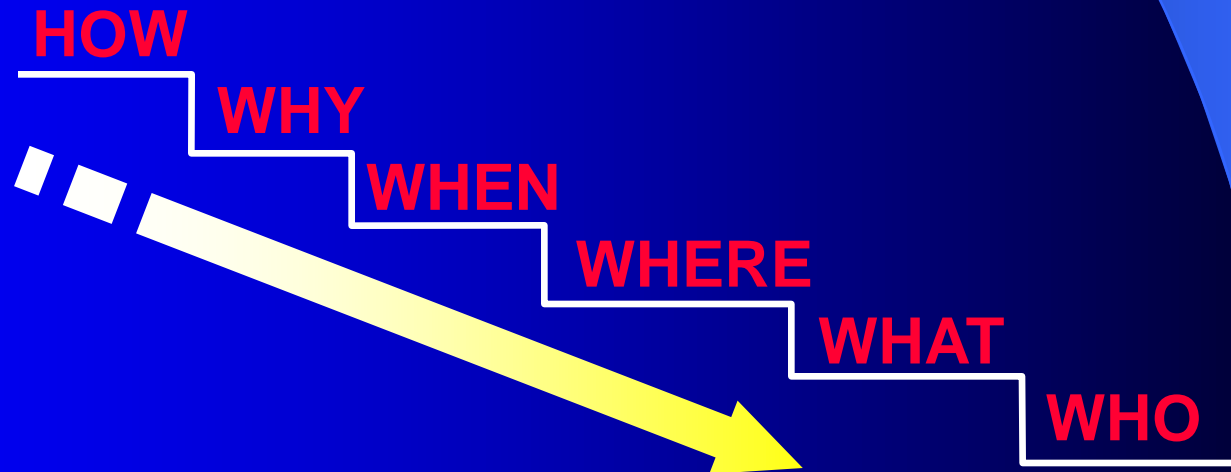
CANNOT BE ANSWERED BY

“YES” OR “NO”

TWO RULES:

1. **ASSUME THE PERSON HAS AN OPINION, THOUGHT, FEELING OR REACTION –**
ASK FOR IT !

2. **BEGIN WITH:**



Poison Air

- **LAWYERS LIVE IN FEAR THAT SOMEONE WILL SAY SOMETHING THAT WILL POISON THE PANEL**
- **PEOPLE DO NOT GIVE UP THEIR BELIEFS OR ATTITUDES THAT QUICKLY**
- **THE JUDGE PROBABLY WON'T STRIKE THE PANEL**

Poison Air

- **Why do you feel that way?**
- **What in your life experience leads you to that belief?**
- **How long have you held that belief?**
- **How strong is that belief?**
 - On a scale of 1 to 5
- **Is there anything I could say that would change your mind?**
- **The judge will instruct you to put aside your personal feelings, how will you do that?**

Poison Air

Shift to close ended ?

- You feel that way because...
- _____ happened to you and led you to this belief.
- You have felt this way since _____.
- On a scale of 1-5 it is a 5 for you.
- You can't think of anything that would change your mind.
- Nothing I would say...
- Nothing the Judge would say...

TELL YOUR STORY FROM THE GET GO

1. EDUCATE - Don't Indoctrinate
DON'T INTIMIDATE
DON'T LECTURE

*... Persuasion builds step by step
They will get your drift*

FOUR VERSIONS OF REALITY

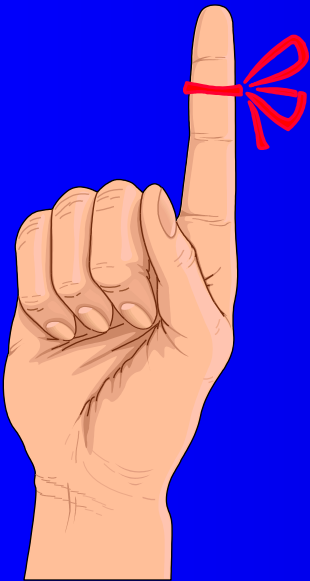
- **WHAT ACTUALLY HAPPENED**
- **THEIR VERSION**
- **OUR VERSION**
- **THE JUROR'S VERSION**

SEE THE CASE AS A SEQUENTIAL STORY IN SEPARATE SCENES

- EACH SCENE HAS AN EMOTIONAL CENTER
- DEFINE IT . . . IS THAT EMOTIONAL ISSUE AN AREA THAT MIGHT REVEAL BIAS
- LIST THOSE AREAS AS VOIR DIRE TOPICS
- DEVELOP QUESTIONS ON EACH TOPIC
- PRIORITIZE THE TOPICS . . . OUTLINE FOR OPENING STARTS TO EMERGE

EACH PIECE BUILDS • THE TRIAL HAS UNITY

LISTEN



LISTENING = RESPECT